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UNITED STATES DISTRICT COURT FOR THE FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN THE MATTER OF:

ALBERT P. LAUMANN PROPERTY
105 JUDITH LANE
CAHOKIA, ILLINOIS

DEAD CREEK SITE

CAUSE NO. 82-3236C

WARRANT FOR ENTRY
and
ORDER PURSUANT TO SECTION 104
OF COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION AND
LIABILITY ACT OF 1980

TO: Any officer, employee, or designated representative of the United States Environmental Protection Agency (U.S. EPA) and any U.S. Marshal. An affidavit having been made by Michael C.O'Toole, an United States Environmental Protection Agency Officer, that there has been a release of hazardous substance into the environment at Dead Creek between Judith and Queeny Avenues in Cahokia, Illinois, (Dead Creek site) and that this release may be presenting an imminent and substantial endangerment to the public health or welfare and that U.S. EPA has determined it is necessary to secure the Dead Creek site to mitigate the public health hazard, and that Albert P. Laumann has indicated unwillingness to allow U.S. EPA access to his property at:

105 Judith Lane Cahokia, Illinois

to secure the Dead Creek site pursuant to Section 104(a) of CERCLA, 42 USC §9604(a); and the Court having found that reasonable grounds exist for an administrative entry and for issuance of a warrant for entry and order pursuant to Section 104 of CERCLA, 42 USC §9604, and the All Writs Act, 28 U.S.C. §1651;

IT IS HEREBY ORDERED AND COMMANDED that U.S. EPA, through its duly authorized representative, the U.S. Marshal, or any other Federal officer, and any duly-designated contractor acting at the direction of U.S. EPA, shall be authorized and permitted to have entry and, as necessary, to reenter the above-described premises to erect a Tence and thereby prevent access to contaminated segment of Dead Creek, as authorized by Section 104 of CERCLA, 42 USC §9604.

IT IS FURTHER ORDERED that a brief inventory identifying any materials removed from the premises be furnished by EPA to representatives of Albert P. Laumann at the conclusion of said inspection.

IT IS FURTHER ORDERED that the duration of this entry authorization shall be of such reasonable length to enable EPA representatives to complete satisfactorily those actions authorized by Section 104 of CERCLA, 42 USC §9604, but in no case longer than thirty days from the date hereof.

IT IS FURTHER ORNERED that the United States Marshal is hereby authorized and directed to assist EPA in such manner as may be reasonably necessary and required to execute this warrant and all the provisions contained herein.

IT IS FURTHER ORDERED that a prompt return of this warrant and any inventory shall be made to this Court showing that the warrant has been executed and that the entry has been completed within the time specified above.

Dated this 4 day of October 1982

United States Magistrate

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN THE MATTER OF:

ALBERT P. LAUMANN PROPERTY 105 JUDITH LANE CAHOKIA, ILLINOIS DEAD CREEK SITE CAUSE NO. 82 -3236C

APPLICATION FOR WARRANT
FOR ENTRY AND ORDER PURSUANT
TO THE COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION AND LIABILITY
ACT OF 1980

NOW COMES THE UNITED STATES, on behalf of the Administrator, United States Environmental Protection Agency (U.S. EPA), by Frederick J. Hess, United States Attorney, and Clifford J. Proud, Assistant United States Attorney, and moves this Court for a warrant and order authorizing U.S. EPA officials and their contractors, to entaupon land in Cahokia, St. Clair County, Illinois, at 105 Judith Lane (Laumann Property), as described further in the attached affidavit of Michael O'Toole, and then and there conduct activities in accordance with the National Contingency Plan, 40 C.F.R., Part 300, to respond to the release of hazardous substances that has occurred into Dead Creek between Judith and Queeny Avenues in Cahokia, Illinois (Dead Creek Site) and the endangerment to public health and welfare that has resulted.

This application is made pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, commonly called "Superfund" or CERCLA, 40 U.S.C. 9601, et seq. The sections of CERCLA relied upon as authorizing EPA to enter and clean up the subject site, are 104(a), and 104(e). Most germane to this application is section 104(e)(1), 42 U.S.C. §9604(e)(1), which provides in material part:

80

"For purposes of assisting in determining the need for response to a release under this title, or enforcing the provisions of this title (U.S. EPA) officers, employees, or representatives are authorized -

(A) to enter at reasonable times any establishment or other place where such hazardous substances are or have been generated, stored, treated, or disposed of, or transported from".

U.S. EPA has determined that there has been a release of hazardous substances into the environment at Dead Creek, adjacent to the subject site, and that an immediate response by U.S. EPA under CERCLA is necessary to mitigate the threat to the public health and welfare that has resulted. CERCLA section 104(a) provides in material part that:

"Whenever (A) any hazardous substance is released, or there is a substantial threat of such release into the environment... the President (through U.S. EPA) is authorized to ... take any other response measure consistent with the national contingency plan which the President (through U.S. EPA) deems necessary to protect the public health or welfare or the environment..."

The National Contingency Plan provides specific authority for the actions U.S. EPA is taking at the Dead Creek Site at 40 C.F.R. §300.65, as follows:

If the lead Agency determines that immediate removal is appropriate, defensive actions should begin as soon as possible to prevent or mitigate danger to the public health, welfare, or the environment. Actions may include, but are not limited to:...(3) Installing security fencing or other measures to limit access.

Accordingly, U.S. EPA has statutory rights in this case to enter the subject site, and to take any response measure (consistent with the national contingency plan) deemed necessary to protect (a) public health, (b) public welfare, and/or (c) the environment.

Although U.S. EPA was, and is, entitled to a warrantless entry upon the subject sites under Section 104(e) of CERCLA U.S. EPA sought the consent of the affected property owners in order to assure peaceful acquiesence to U.S. EPA actions. The details of U.S. EPA's efforts to obtain access by consent are set out in the affidavit of Mr. O'Toole, that is attached to this application. Of the twelve property owners contacted, all consented to U.S. EPA access to build the fence except Mr. Laumann. While U.S. EPA has no intention of waiving its right to warrantless access to this property under Section 104 of CERCLA, it is seeking a warrant here as a further assurance that there will be peaceful acquiesence by the property owner, Mr. Laumann, to U.S. EPA's actions in fulfilling its responsibilities under CERCLA and the national contingency plan.

Although its precise ruling is inapposite here, the Supreme Court decision in Marshall v. Barlow's, Incorporated, 436 U.S. 307 (1978), provides authority for this Court to issue a warrant where a statute (such as CERCLA §104(e)(1)) confers a right of entry. Further authority for the Court is to issue the requested warrant and order is provided by the All Writs Act, 28 U.S.C. §1651.

The supporting affidavit demonstrates that (1) U.S. EPA has determined that a hazardous substance has been released into the environment at the Dead Creek Site, (2) the release is causing an imminent threat to the public health and welfare of the local citizens, (3) immediate action to secure the Dead Creek Site from public access is necessary to mitigate the threat to public health, (4) installation of a fence accross a portion of the Laumann Property is necessary in order to secure the Dead Creek site, and (5) Mr. Laumann has

refused to voluntarily allow the U.S. EPA the access to the Laumann Property that is necessary for the U.S. EPA to secure the Dead Creek Site.

Respectfully submitted,

UNITED STATES OF AMERICA

FREDERICK J. HESS United States Attorney

For Clifford J. Proud / Assistant United States Attorney

OF COUNSEL:

Thomas W. Daggett
Assistant Regional Counsel
U.S. Environmental Protection Agency
Chicago, Illinois

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN	THE	MAT'	rer	0F:	
10 CAI	5 JUI HOKI	P. I DITH A, II REEK	LAN LIN	E OIS	PROPERTY

CAUSE NO. 82-3236C

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ENTRY AND ORDER PURSUANT TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980

AFFIDAVIT OF MICHAEL C. O'TOOLE

State of Illinois) ss County of St. Clair)

I, Michael C. C'Toole, being first duly sworn, state as follows:

- 1. I am currently an environmental engineer with the Waste Management Division, United States Environmental Protection Agency, Region V, Chicago, Illinois (U.S. EPA) and have been employed in this position since 1981. I am the On-Scene Coordinator (OSC) for the Dead Creek Site in Cahokia, Illinois. As an OSC I am responsible for coordinating and directing Federal response activities at abandoned hazardous waste sites.
- 2. The U.S. EPA became involved in addressing health hazards at the Dead Creek site at the request of State officials. The Illinois Environmental Protection Agency (IEPA) learned of Dead Creek contamination in May 1980 when local citizens reported that material, in the creek bed would periodically smolder. The IEPA began a full field investigation of the site in August 1980 and collected numerous sediment samples of the creek. The analytical results of these samples revealed high levels of heavy metals, polychlorinated biphenyls, xylene, dichlorobenzene, trichlorobenzene and chloronitrobenzene (Attachment #1). Based on these results, the IEPA sealed off Dead Creek between Queeny and Judith Lanes from general access pursuant to Section 34 of

the Illinois Environmental Protection Act. In addition, 7000 feet of snow fence were installed around this portion of the creek. The IEPA seal order has never been challenged by any of the current landowners.

- 3. U.S. EPA personnel visited the Dead Creek site in March 1982 and discovered the snow fence trampled down in many areas. It was also reported that children frequent the creek. IEPA felt it was necessary to secure the site more adequately and requested U.S. EPA to assist in May 1982. As OSC I determined with the concurrence of U.S. EPA Washington that an immediate site security action would be necessary to mitigate an imminent threat to the public health and welfare of the local citizens from direct contact with the creek. In August 1982, U.S. EPA contracted with a local fence contractor to install a chain link fence around Dead Creek in place of the existing snow fence. The contractor has installed 80% of the fence to date.
- 4. The land that would be enclosed by the fence that U.S. EPA is erecting is the same land that has been under the IEPA seal order for well ower a year. The IEPA granted U.S. EPA access to the site to erect the fence under their seal authorities (Attachment 2). I also contaced the twelve adjacent landowners to the creek to obtain their permission to install the fence. All landowners concurred but Mr. Albert Laumann. I discussed the matter of granting voluntary access to the U.S. EPA to install the fence with Mr. Laumann on four different occasions. He understood the need for a more secure fence but he was not going to grant access to his property voluntarily. Mr. Laumann indicated that he might retain counsel on this matter, and I asked him to notify me as soon as he did. On September 21, 1982, I talked with Mr. Laumann one last time. He told me he had decided not to retain counsel but he still did not want to voluntarily allow access.

In order to complete the site security action I must have access to Mr.

Laumann's property so that the fence contractor may finish installing the chain link fence.

Further, affiant sayeth not.

MICHAEL C. (O'TOOLE
Environmental Engineer
United States Environmental
Protection Agency, Region V

Subscribed and sworn to before me this ______ day of October 1982

UNITED STATES MAGISTRATE

1	Lining to the Labora Oat and cists of Sag	THE TAKEN SELLITION OF I'VE	
THROUGH October 31	, 1980 FROM CAJIOKIA DEAD CREEK AREA.	(ALL RESULTS IN PPH UNLESS CHIERWISE STATED).	;

				•										Chluro	Chloro	Nitro-	loto
••	CHEMICAL	BARIUM	COPPER	LEAD	NICKEL	PHOSPHO- ROUS	ZINC	PCB's	CHLOR- DANE	Alkyl- * Renzenes		LOTHENE	XYLEGE	Benz-	Benz-	Benz-	Pheno
٠	Soil Normals (PPM)	250	70	16	80	1180	132	*M.A.C 28 PPB	*M.A.C. 50 PPE	*M.A.C. 10-100 PPM	N.A.C	*M.A.C. 118 PPM	*M.A.C. 3 PPM	*M.A.C. 5 PPM	1-10 PP	. *:1.A.C. N 0-100 PPM	*M.A. 500 P
• •	Location																
1	Soil - 50 yds. s. of Queeny Ave.	-	_					5200		en en er erstenen							
2	Soil - 40 yds. n. of Judith Lane	4800	32000	2400	3500	7040	25000	120							_	<u> </u>	
. •	M.A.C. for surface ater (PPM)	< 5.0	<0.02	<0.1	∠1.0	< 1.0	<1.0	28 PPB	50 PPB	10-100 PPM		118 PPM	3 FPM			10-100 PPM	0.5 PI
7	Water-suyf-ce N. area of pond	0.2	0.04	0.00	0.02	0.2	0.1	0.9 PPB	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
8	Water-surface S. area of pond	0.5	0.3	0.01	0.05	0.3	0.7	4 PPB	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
	Soil - 125 ft. N. of Judith Lane	1800	19500	1500	2000	_	14000	160	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
11	Soil - 125 ft. N. of Judith Lane 12"	900	4100	1000	500		15000	0.6	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
•	M.A.C. for drinking water (PPN)	〈 1	〈 1	₹0.05	<1	< 1	۷ 5.0	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE	NONE
12	Soil 100 yds. N. of	2300	13000	1200	1150		14000	110	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
13	Soil - 100 yds. N. of	650	5700	900	820	-	18000	8	N. D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
14	Soil - 100 yds. N. of 12)- Surface	2300	15000	2000	1000	-	19000	59	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
15	Soil - 100 yds. N. of	950	1400	2500	1100		24000	3	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	к.р.	N.D.	N.D.
•	M.A.C. for surface water (PPM)	< 5.0	< 0.02	<0.1	<1.0	< 1.0	<1.0	28 PPB	50 PPB	10-100 PPM	-	118 PPM	3 PPM			10-100 PPN	0.5 P.
16	Soil - 100 yds. N. of	1050	3200	1600	1300	-	14000	220	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	.vd.	N.D.

	, T	HKOUGH O	ctober 31	, 1980	FROM CAI	IOKIA DEAD	CREEK ARE	ALL	RESULTS	TH SEN UN	LESS OF	IERW [SE S	TATED).	(Di) Chloro	Chloro	Chloro- Nitro-	Dich- lota
1	CHEMICAL	BARTUM	COPPER	LEAD	NICKEL	PHOSPHO- ROUS	ZINC	PCB's	CHLOR- DANE	Alkyl- Benzenes		roluene	XYLENE	Benz-	Benz-	Benz-	Phene
	Soil Normals (PPM)	250	70	16	80	1180	132	*M.A.C 28 PPB	*M.A.C. 50 PPB	*M.A.C. 10-100 PPM	M.A.C.	*N.Ā.C. 118 PP:1	AM.A.C. 3 PPM	*M.A.C. 5 PPM	*M.A.C. 1-10 PPM		*M.A. 500 P
'i	Location					/											
17	Soil - 100 yds. N. of	880	5700	1000	700		19000	32	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
18	Soil - 100 yds. N. of	240	180	< 25	100		1750	0.05	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
10	Soil - 135 yds. N. of	370	140	< 25	∠ ·10		< 50	1600	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
20 '	Soil - 135 yds. N. of 6 5 yds. W. of 619	1400	840	∠ 100	<u>∠ 10</u>		260	17000	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
25	Soil - Drainage Cut.	5500	21900	1700	1700	-	19900	540	N.D.	N.D.	N.D.	N.D.	N.D.	0.4	N.D.	N.D.	N.D.
26	Sediment - W. Pond Area, N. of Drainage	4400	18700	1400	1600		17700	1100	N.D.	N.D.	N.D.	N.D.	N.D.	23	N.D.	N.D.	N.D.
	Sediment - NW Pond Area	350	4500	130	590	-	2600	· 24	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
35	Soil - 40 yds. S. of Queeny Avenue	2500	1000	260	130	2000	1500	1000	N.D.	370	N.D.	N.D.	N.D.	660	78	1701	N.D.
36	Soil - 268 Steps S. of # (35)	5000	44500	2000	3000	8900	62900	350	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
-	Health Effects	Skin Effects	Affects Kidneys,		Alfects Skin &	Affects Liver,	General ly of	Affect Skin,	Affects Skin,	Effect Lungs,	Toxic to CNS	Affects Liver &	Causes Liver &	Affects hiver,	Liver,	Liver,	Affect CNS & Kidney
	N.D.=None Detected	& Resp- iratory	Skin,	& Aff-	Respir- atory	Skin, Blood,	low Toxic-	Eyes, Liver.	Kidneys, Liver.		and lungs.	Kidneys	Kidney Diseases	Lungs, Skin	Lungs, Skin.	Lungs, Skin	VTAILS)
	1.A.C.=Maximum Allow- able Concentration	Problem		Kidneys [System	Teeth.	ity.	: 				,					
•	(1/10 Tl _m 96 for soil as surface water)	d				į			i	1			}			1	

		nkooon ()	ctoper 31	, 1960	raun ca	HUKLA DE.AD	·	EA. (ALL				HERWISE S	TATED).	(Di) Chloro	(Tri) Chloro	Chloro- Nitro-	Dich
	CHEMICAL	BARTUM	COPPER	LEAD	NICKEL	PHOSPHO- ROUS	ZINC	P.CB's	CHLOR- DANE	Alkyl- Nenzenes	BI- PHENYI	TOI.UENE	XYLENE	Benz- ene	Benz-	Benz-	Phena
	Soil Normals (PPM)	250	70	16	80	1180	132	*M.A.C 28 PPB	*M.A.C. 50 PPB	*M.A.C. 10-100 FPN	*M.A.C.	*M.A.C. 118 PPM	*M.A.C. 3 PPM	*M.A.C. 5 PPM	*M.A.C.	14.1.A.C.	*N.A.
	Location																
49	Soil 200 ft. S. of Queeny Ave., in Dead Creek, 0 - 1 ft.	-	-	-	-	-	-	9200 PPM	N.D.	N.D.	6000 PPM	N.D.	540 PPM	12000 PPM	380 PPM	200 PPM	N.D.
-	M.A.C. for drinking water (PPM)	< 1	< 1	₹0.05	<1	< 1	ح 5.0	NONE	NONE	NONE	NONE	NONE	NONE	::0:: E	NOME	HONE	NONE
49 A	Soil from # 49 '-2 ft. deep	-	-	- ·	-	-	_	2600 PPM	N.D.	N.D.	9000 PPM	N.D.	250 PPM	8900 PPM	3700 PPM	240 PPM	N.D.
	Jil from #49 · 2-3 ft. deep	-	-	-	-	-	_	920 PPM	N.D.	N.D.	1100 PPM	N.D.	N.D.	240 PPM	590 PPM	N.D.	N.D.
	Soil from # 49 3-4 ft. deep	_	•	-	-	_	-	240 PPM	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	-N.D.	N.D.	N.D.
	Soil from \$ (49) - 4-5 ft. deep	-		-	_	_	_	53 PPM	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
. •	M.A.C. for surface water (PPM)	< 5.0	< 0.02	<0.1	∠1.0	< 1.0	<1.0	28 PPB	50 PPB	10-100 PPM		118 PPM	3 PPM	5 PPM	1-10 PPM	10-100 PPM	0.5 P
	Soil from # (49) 5-6 ft. deep '	—		-	-	-	-	53 PPM	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
	Soil from # 49 6-7 ft. deep	-		-	. –	_	_	54 PPM	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.	N.D.
	,Health Effects	Skin	Affects		Affects	Affects	General	Affect Skin,	Affects Skin,	Effect Lungs,	Toxic to CNS	Affects Liver 6	Causes Liver &	Affects Liver,	Affects Liver,	Affects Liver,	Affect
:	N.D.=None Detected	Effects & Resp+ iratory	Kidneys, Skin,	& AEE-	Skin & Respir- atory	Liver, Skin, Blood,	ly of low Toxic-	Eyes, Liver.	Kidneys, Liver.	Skin.	and lungs.	Kidneys	Kidney Diseases	Lungs, Skin	Lungs, Skin.	Lungs, Skin	
	A.C.=Maximum Allow- onle Concentration	Problem		Kidneys	System	Teeth.	ity.										
•	(1/!u TL _m 96 for soil at surface water	đ															

MITACIMENT # L.



Envir nmental Protection Agency 2200 Churchill Road, Springfield, Illinois 62706

217/782-5544

July 22, 1982

Michael O'Toole, On-Scene Coordinator United States Environmental Protection Agency Region V 230 South Dearborn Street Chicago, Illinois 60604

Re: Access to Dead Creek Site, Sauget

Dear Mr. O'Toole:

I am in receipt of your letter dated July 20, in which you request access to the above-referenced property, specifically that property between Judith and Queeny Roads, for the purpose of replacing the existing fence with a more secure fence. You correctly note that this Agency has sealed the site from general access pursuant to Section 34 of the Illinois Environmental Protection Act.

I am authorized to inform you that this Agency has approved your request. Naturally, this authorization is limited to the purposes and locations stated in your letter, and does not relieve representatives of your Agency and its contractors from responsibility for working out any access-related or other difficulties associated with the impact of your actions on adjacent properties.

I also wish to remind you that, to the extent possible, the existing fence originally erected by this Agency should be set aside and made available for removal by this Agency. You can simply advise me or Bill Child as to when and where the old fence will be available for pickup.

If you have any further questions, please don't hesitate to contact me. Thank you for your actions in securing this site.

Very truly yours,

Phillip R. Van Ness

Enforcement Programs Division

PRVN:bkm

cc: Bill Child

Bill Seltzer Ken Mensing